prove absence of misconduct on her part, such proof would be competent, without constituting a collateral impeachment of the decree of dissolution,[23] in that the issue is distinct and one which for extraterritorial purposes was not properly before the court of the sister state.[24]

THE DUTY OF A LOCAL TELEPHONE COMPANY TO GRANT LONG DISTANCE CONNECTIONS.—Given two public service companies one demanding the services of the other, it is well settled that the former, though a rival of the latter, is entitled to the same rights as the public at large.[1] Thus, a carrier is bound to receive and to deliver over its lines all freight tendered to it by a connecting carrier.[2] This duty relates back to the obligation to the original sender[3] and is not modified by competitive relations between the companies in question, though the problem as to reasonable rates may be affected by this element.[4] It is equally well settled, on the other hand, that a public service company need accord to another company no greater privileges than those enjoyed by the rest of the public. It cannot, therefore, be compelled to surrender its system to another corporation so that the latter may utilize it as its own.[5] So, while one telegraph company must receive and transmit messages tendered by another, it need not give the latter physical control over any of its instruments or other facilities.[6]

The application of these principles to the telephone business gives rise to difficulties. The service to the public in this case is different from that rendered by a carrier or a telegraph company in that it necessarily involves on the part of those served, a partial use of and control over the instrumentalities and facilities of the telephone company. Consequently, when a telegraph company demands the installation of a telephone in its office and tenders the published rates, the service it asks is identical with that rendered to the public in general and must, therefore, be furnished, competitive relations between the two companies nothwithstanding. This result has, however, not been reached without considerable hesitation.[7] While such service has been almost uniformly compelled in the past, the decisions have rested wholly upon the ground that, as the telephone company was

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[23]Cox *v.* Cox *supra;* Cochran *v.* Cochran *supra.*

[24]Thurston *v.* Thurston (1894) 58 Minn. 279; Woods *v.* Waddle *supra;* Blackinton *v.* Blackinton *supra.*

[1]Beale & Wyman, R. R. Rate Regulation 296, 297.

[2]Beers *v.* Wabash, St. L. & P. Ry. Co. (1888) 34 Fed. 244; Vermont & M. R. R. Co. *v.* Fitchburg R. R. Co. (1867) 14 Allen 462; Peoria & P. U. Ry. Co. *v.* Chicago R. I. & Pac. Ry. Co. (1884) 109 Ill. 135; Peoria etc. Ry. Co. *v.* Rolling Stock Co. (1891) 136 Ill. 643.

[3]Elliott on Railroads § 1432; Dunham *v.* Boston & M. R. R. Co. (1879) 70 Me. 164; see also Crosby *v.* Pere Marquette R. R. Co. (1902) 131 Mich. 288.

[4]Johnson *v.* Dom. Ex. Co. (1896) 28 Ont. 203; but see Camblos *v.* P. & R. R. R. (Pa. 1873) 4 Brewst. 563.

[5]Phila. etc. St. Co.'s Petition (1902) 203 Pa. 354; Shelbyville R. R. Co. *v.* L. C. & L. R. R. (1885) 82 Ky. 541; Ilwaco Ry. Co. *v.* Oregon Short Line Co. (1893) 57 Fed. 673; Railroad *v.* Railroad (1883) 16 Md. 263.

[6]See Matter of Baldwinsville Tel. Co. (N. Y. 1898) 24 Misc. 221; State *v.* Tel. Co. (1901) 61 S. C. 83.

[7]See People *ex rel.* Postal Tel. Co. *v.* Hudson Riv. Tel. Co. (N. Y. 1887) 19 Abb. N. C. 466.

already serving one telegraph company, it could not discriminate against others.[8] A recent case, *Postal Telegraph Cable Co.* v. *The Cumberland Telegraph & Telephone Co.* (1910) 43 N. Y. L. J. No. 9, squarely presented the problem whether the defendant might refuse to serve any telegraph company whatever, and the court extended the rule taking the sound position that irrespective of questions of discrimination, the telephone company was under a primary duty to serve all.

An examination of the relations between two telephone companies still further accentuates the unique character of this branch of public service. Even here, however, the same general tendencies are plainly discernible. It follows necessarily from the general principles adduced above that one company must upon the demand of another install a telephone in the latter's terminal office and allow it to repeat messages over its wires as forwarding agent of the original senders. In view, however, of the conversational character of a telephone message it is obvious that such an arrangement, unlike the analogous situation in the railroad or telegraph business, affords a most inadequate method for the transmission of oral information. For this reason the courts have been inclined to encourage the physical union of connecting systems. It has been held for example that, once a telephone company grants long distance connections to a second, it is bound to accord equal privileges to all others.[9] It has even been decided that once two companies in different towns have connected their exchanges the public has such an interest in the maintenance of this relation as to require its continuance during the corporate existence of both companies.[10] Further, statutes providing for such service have been mostly liberally construed.[11] The courts, however, have thus far refused to go the length of recognizing a primary duty to accord long distance connections, but have rested their decisions wholly upon the supposed existence of a secondary duty resulting, because of the consequent discrimination, from an initial long distance connection.[12] If the demanding company be regarded as the agent of its subscribers in endeavoring to secure the transmission of their messages the reason assigned is perhaps adequate. It is arguable, moreover, that, while a public service company may grant favors,[13] a concession such as that here in question is so intimately connected with the public duty of the company as to constitute an unlawful discrimination against that portion of the public served by the demanding company. This result is, however, subject to serious criticism,[14] and it would seem that the cases

[8]State *ex rel. v.* Bell Tel. Co. (1885) 23 Fed. 539; Telegraph Co. *v.* Telephone Co. (1881) 61 Vt. 241; State *ex rel. v.* Del. & A. Tel. & Tel. Co. (1891) 47 Fed. 633; Del. & A. Tel. Co. *v.* State *ex rel.* (1892) 50 Fed. 677; Bell Co. *v.* Com. *ex rel.* (1886) 3 Cent. Rep. 907; but see A. R. T. Co. *v.* C. T. Co. (1881) 49 Conn. 352.

[9]U. S. Tel. Co. *v.* Central Union Tel. Co. (1909) 171 Fed. 130.

[10]State *v.* Cadwallader (Ind. 1909) 87 N. E. 644.

[11]Billings Mutual Tel. Co. *v.* Rocky Mountain B. Tel. Co. (1907) 155 Fed. 270.

[12]See State *v.* Cadwallader *supra.*

[13]People *ex rel.* Cairo Tel. Co. *v.* W. U. Tel. Co. (1896) 166 Ill. 15; Fluker *v.* Railroad (1888) 81 Ga. 461.

[14]Its weakness is indicated and the counter arguments presented in 9 COLUMBIA LAW REVIEW 714.

could best be sustained by the recognition of a primary duty to afford physical connections.

A recent decision, *Home Tel. Co.* v. *G. & N. Tel. Co.* (Mo. 1910) 126 S. W. 773, though hesitating to so hold, contains a strong dictum urging the recognition of this duty.[15] Apparently opposed to such a result are the cases denying the duty of a railroad to make physical connections with other carriers.[16] It is to be noted, however, that practical considerations arising from the nature of the railroad business had a controlling influence upon these decisions and that no such difficulties are present in the problem at hand.[17] Further, if telephone companies are, like railroads, under the usual obligation to receive and deliver messages from other companies, it is difficult to see, as indicated above, how, in view of the peculiar nature of a telephone message, such duty can be adequately performed without a physical joining of the wires. The right to have a trunk connection, moreover, does not involve any greater physical control over the instrumentalities of the company than is had by any of its subscribers, but on the contrary merely affords the sending company the same opportunity to transmit messages as agent of its subscribers as is possessed by the regular patrons of the receiving company. While it is true, on the other hand, that the local company is not bound to carry messages beyond its lines, it is its duty to deliver to the next connecting company,[18] and this can be done adequately only when a physical junction of the wires is made.

SPECIFIC PERFORMANCE OF NEGATIVE COVENANTS IN CONTRACTS FOR SERVICES.—Although it is well settled that equity will not enforce the performance of purely affirmative contracts for personal services,[1] such contracts often contain negative provisions the breach of which may be restrained by injunction if the remedy obtainable at law is inadequate. These negative covenants may properly be divided into two general classes. In the first category are to be found stipulations introduced primarily for the purpose of enforcing indirectly the affirmative agreement to perform services and under certain circumstances some courts will, even in the absence of express stipulation, imply such a covenant from the other terms of the contract.[2] The well known English case of *Lumley* v. *Wagner*[3] and the decisions following it[4] are illustrative of these agreements. In such cases the inadequacy of the remedy at law consists in the difficulty of readily finding a substitute for the employee,[5] and consequently such covenants are enforced in equity

[15]See also U. S. Tel. Co. *v.* Central Union Tel. Co. *supra.*

[16]A. T. & S. R. R. *v.* D. & N. O. R. R. (1883) 110 U. S. 667.

[17]See K. & I. B. Co. *v.* Louisville & N. R. Co. (1889) 37 Fed. 567, 620.

[18]Western Union Tel. Co. *v.* Turner (1901) 94 Tex. 304.

[1]Whitwood Chemical Co. *v.* Hardman L. R. [1891] 2 Ch. 416.

[2]Montague *v.* Flockton (1873) L. R. 16 Eq. 189; 2 COLUMBIA LAW REVIEW 162.

[3]1 De Gex M. & G. 604.

[4]Montague *v.* Flockton *supra;* Daly *v.* Smith (N. Y. 1874) 6 Jones & Spencer 158.

[5]Strobridge Litho. Co. *v.* Crane (1890) 12 N. Y. Supp. 898; Osius *v.* Hinchman (1908) 150 Mich. 603.